

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

MATTHEW J. McGUINNESS,)	
Register No. 1051477,)	
)	
Plaintiff,)	
)	
v.)	No. 08-4162-CV-C-SOW
)	
MISSOURI DEPARTMENT OF)	
CORRECTIONS, et al.,)	
)	
Defendants.)	

ORDER

On January 26, 2009, United States Magistrate Judge William A. Knox recommended dismissing plaintiff's claims for failure to exhaust administrative remedies as required by 42 U.S.C. § 1997e. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

The court has conducted a de novo review of the record, including plaintiff's suggestions in opposition to defendants' motions to dismiss, treated as exceptions, filed on January 29, 2009; and the reply suggestions in support of dismissal filed by defendant Correctional Medical Services on January 30, 2009. The issues raised in plaintiff's exceptions were adequately addressed in the report and recommendation. The court is persuaded that the recommendation of the Magistrate Judge is correct and should be adopted.

Inmates who file an appeal with the United States Court of Appeals for the Eighth Circuit are required to pay the full \$455.00 appellate filing fee, regardless of the outcome of the appeal. Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). The filing of a notice of appeal is considered a consent by the inmate to allow prison officials to deduct an initial partial appellate filing fee and later installments from the prisoner's account.

IT IS, THEREFORE, ORDERED that the Report and Recommendation of January 26, 2009, is adopted. [38] It is further

ORDERED that defendants' motions seeking dismissal of plaintiff's claims for failure to exhaust administrative remedies are granted and plaintiff's claims are dismissed, without prejudice, pursuant to 42 U.S.C. § 1997e. [9, 30, 33] It is further

ORDERED that the motion of defendant Correctional Medical Services to dismiss for failure to state a claim is denied, without prejudice. [11]

/s/Scott O. Wright
SCOTT O. WRIGHT
Senior United States District Judge

Dated: March 23, 2009